

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

MIKE WILLIAMS,)
)
Plaintiff)
)
v.) Case No.:
)
NCO FINANCIAL SYSTEMS, INC.,) COMPLAINT AND DEMAND FOR
) JURY TRIAL
)
Defendant)
) (Unlawful Debt Collection Practices)

COMPLAINT

MIKE WILLIAMS ("Plaintiff"), by and through his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has an office in the Commonwealth of Pennsylvania and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

2 PARTIES

6. Plaintiff is a natural person residing in Glenwood, Iowa, 51534.

7. Plaintiff is a person granted a cause of action under the FD CPA. See 15 U.S.C. §1692k(a), and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec 22, 2000).

7 8. Defendant is a national debt collection company with corporate headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

9 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),
10 and repeatedly contacted Plaintiff in an attempt to collect a debt in an attempt to collect a debt of
11 another person.

10. Defendant acted through its agents, employees, officers, members, directors,
heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

14 PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

12. In particular, the FDCPA broadly enumerates several practices considered
contrary to its stated purpose, and forbids debt collectors from taking such action. The

1 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not
2 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any
3 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt
4 collector may not use any false, deceptive, or misleading representation or means in connection
5 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use
6 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
7 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there
8 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which
9 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in
10 connection with the collection of a debt.
11

12 13. In enacting the FDCPA, the United States Congress found that “[t]here is
13 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many
14 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,
15 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress
16 additionally found existing laws and procedures for redressing debt collection injuries to be
17 inadequate to protect consumers. 15 U.S.C. § 1692b.
18

19 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt
20 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection
21 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt
22 collection practices are not competitively disadvantaged, and to promote consistent State action
23 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.
24
25

FACTUAL ALLEGATIONS

15. Defendant and others it retained began in or around August of 2010 constantly and continuously placing harassing and abusive collection calls to Plaintiff seeking and demanding payment for an alleged consumer debt of another person.

16. Upon information and belief, the alleged debt Defendant was seeking to collect arose out of transactions, which were primarily for personal, family, or household purposes.

17. Defendant identified the debtor as "Christopher Ross."

18. Plaintiff spoke with Defendant and advised that "Christopher Ross" did not live with him, that Defendant had the wrong telephone number, and not to contact him anymore.

19. Despite Plaintiff's instructions not to contact him, Defendant and others it retained still continued to contact Plaintiff in its attempts to collect a debt.

20. Defendant and others it retained repeatedly contacted Plaintiff at least two (2) times a day in its attempts to collect a debt for Christopher Ross, causing Plaintiff to receive at least ten (10) collection calls a week and more than twenty (20) collections calls a month.

21. The repetitive calls to Plaintiff were disturbing, harassing, and an invasion of privacy.

22. Defendant failed to investigate or verify contact information prior to and after calling Plaintiff.

23. Defendant failed to update its records to avoid further harassment of Plaintiff.

CONSTRUCTION OF APPLICABLE LAW

24. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." Russell v.

1 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233
2 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status
3 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

4 25. The FDCPA is a remedial statute, and therefore must be construed liberally in
5 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The
6 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit
7 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the
8 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be
9 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.
10 2002).

11 26. The FDCPA is to be interpreted in accordance with the "least sophisticated"
12 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano
13 v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,
14 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for
15 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,
16 and the fact that a false statement may be obviously false to those who are trained and
17 experienced does not change its character, nor take away its power to deceive others less
18 experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it
19 ensures protection of all consumers, even naive and trusting, against deceptive collection
20 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of
21 collection notices. Clomon, 988 F. 2d at 1318.

COUNT I
DEFENDANT VIOLATED THE
FAIR DEBT COLLECTION PRACTICES ACT

27. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Defendant violated of the FDCPA generally;
- b. Defendant violated § 1692b(2) of the FDCPA by informing Plaintiff that another person owed a debt, specifically "Christopher Ross";
- c. Defendant violated § 1692b(3) of the FDCPA by calling Plaintiff more than once in connection for the collection of a debt for "Christopher Ross";
- d. Defendant violated § 1692c(b) of the FDCPA by communicating with Plaintiff about a debt allegedly owed by "Christopher Ross";
- e. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in connection with the collection of an alleged debt;
- f. Defendant violated § 1692d(5) of the FDCPA, when it caused Plaintiff's telephone to ring repeatedly or continuously with the intent to harass, annoy or abuse Plaintiff;
- g. Defendant violated § 1692f of the FDCPA by using unfair and unconscionable means with Plaintiff to collect or attempt to collect a debt;
- h. Defendant acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

WHEREFORE, Plaintiff, MIKE WILLIAMS, respectfully prays for a judgment as follows:

- a. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);

- 1 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
2 15 U.S.C. § 1692k(a)(2)(A);
3 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
4 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
5 d. Any other relief deemed appropriate by this Honorable Court.
6


7 **DEMAND FOR JURY TRIAL**

8 PLEASE TAKE NOTICE that Plaintiff, MIKE WILLIAMS, demands a jury trial in this
9 case.
10

11
12 DATED: 4/22/11

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

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